

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

In the matter of:)	DOCKET NO. S-03540A-04-0000
)	
HCH ENTERPRISE, L.L.C)	NOTICE OF OPPORTUNITY FOR
5952 West Gail Drive)	HEARING REGARDING PROPOSED
Chandler, Arizona 85226)	ORDER TO CEASE AND DESIST
)	ORDER FOR RESTITUTION, FOR
HELEN C. HARTZE,)	ADMINISTRATIVE PENALTIES AND
5952 West Gail Drive)	FOR OTHER AFFIRMATIVE ACTION
Chandler, Arizona 85226)	(BY: HELEN C. HARTZE and MARK
)	KESLER)
MARK KESLER,)	
10783 W. Encanto Blvd)	
Avondale, Arizona 85323)	
)	
RESPONDENTS.)	
)	
)	
)	

15 **NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**
16 **EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

17 The Securities Division ("Division") of the Arizona Corporation Commission
18 ("Commission") alleges that RESPONDENTS HCH ENTERPRISE L.L.C., HELEN C. HARTZE
19 and MARK KESLER have engaged in acts, practices and transactions, which constitute violations
20 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

21 **L**

22 **JURISDICTION**

23 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
24 Constitution and the Securities Act.

25 ...

II.**RESPONDENTS**

2. HCH ENTERPRISE L.L.C. ("HCH"), whose last known business address was 5952 West Gail Drive Chandler, Arizona 85226 was at all relevant times an Arizona organized limited liability company. HCH was organized in August of 2002. HELEN C. HARTZE is the statutory agent and sole member of HCH. HCH is the statutory agent of two investor entities, Ashberry Apartments, L.L.C. ("Ashberry") and Williamsburg Apartments L.L.C. ("Williamsburg"). HCH is the Trustee of 1112 Ashberry Trust dated November 14, 2002 and 1221 Jackson Lane Trust dated November 1, 2002.

3. HELEN C. HARTZE ("HARTZE"), whose last known address was 5952 West Gail Drive Chandler, Arizona 85226 was at all relevant times the statutory agent and sole member of HCH. Since December 12, 2001, HARTZE has been a licensed mortgage broker with the Arizona Department of Banking doing business under the name HCH.

4. JOHN DOE HARTZE is the husband of HARTZE. JOHN DOE HARTZE is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

5. MARK KESLER ("KESLER"), whose last known address was 10783 W. Encanto Blvd, Avondale, Arizona 85323 was at all relevant times a sales person with HCH. On September 5, 2002, the Commission issued a Temporary Cease and Desist order against a number of Respondents including KESLER, Docket No. S-03491A-02-0000. KESLER is a named Defendant in a pending Maricopa County Superior Court action, *Arizona Corporation Commission v. American National Mortgage Partners L.L.C. et al.*, CV2003-005724.

6. JANE DOE KESLER is the wife of KESLER. JANE DOE KESLER is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

4 8. HCH, HARTZE and KESLER may be collectively referred to as
5 “RESPONDENTS.” JOHN DOE HARTZE and JANE DOE KESLER may be collectively
6 referred to as “RESPONDENT SPOUSES.”

III.

9. Beginning in about October of 2002 through January of 2003, RESPONDENTS offered and sold interests in two different investment opportunities raising approximately \$360,000 from about nine individuals. The investment opportunities involved interests in two different Arizona limited liability companies ("L.L.C."), Ashberry and Williamsburg.

11. Similar to ANMP, the Ashberry and Williamsburg investments involved raising money from investors to fund loans secured by real property. Investors were placed in an L.L.C. and the L.L.C. funded the loans. RESPONDENTS located individuals or entities in need of funds and who had equity in real property to secure the loans. In this matter, the funds were raised for one Borrower ("Borrower").

1 13. RESPONDENTS formed two Trusts, 1112 Ashberry Trust dated November 11,
2 2002 and 1221 Jackson Lane Trust dated November 11, 2002. HCH was the Trustee of the two
3 Trusts. The Borrower would complete documentation transferring the beneficial interests in their
4 property to the Trust and the investors, through a limited liability company created by
5 RESPONDENTS, would become the second beneficiary on the Trust. The Borrower also signed a
6 promissory note setting forth the terms of repayment and interest rate.

7 14. Although both Ashberry and Williamsburg were represented to be member-managed
8 L.L.C.'s, the investors did not have management control over the L.L.C.'s. According to the
9 documents provided to the investors, the principal place of business of the L.L.C.'s was HCH.
10 The books and records of the L.L.C.s were located at HCH. HCH was the trustee of the trusts and
11 the payments from the Borrower were to be made to HCH. Most of the funds raised from
12 investors, whether they were members of Ashberry or Williamsburg, were deposited into the HCH
13 bank accounts. HARTZE was the sole signatory on the HCH account.

14 15. According to the investors and the offering documents, the investment would be
15 secured by real property. However, the final documents signed by the Borrower and the Trustee
16 indicate that the documents would not be recorded unless the Borrower defaulted on the loans.

17 16. At no time were investors informed that they were to replace HCH as the Trustee
18 of the Trusts. The investors were not informed that it was their responsibility to record their
19 interest in the real property if there was a default by the Borrower. In fact, the investors did not
20 know their interests would not be recorded against the property until or unless there was a default.
21 The investors were not provided complete investor records to allow them to independently
22 contact the other members of the L.L.C. in order to take control of the L.L.C. and complete its
23 business activities.

24 17. The Borrower sought \$405,000 from the investors in the Ashberry investment.
25 Starting in November of 2002 through January of 2003, the Ashberry investment raised
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1 approximately \$245,000 from about seven investors. The investment was to be secured by an
2 interest in an apartment complex located in Columbus, Ohio.

3 18. In November of 2002, the Borrower sought \$115,000 from the investors. The
4 Williamsburg investment raised approximately \$115,000 from two investors in November of 2002.
5 The investment was to be secured by an interest in an apartment complex located in Middletown,
6 Ohio.

7 19. The Borrower defaulted on the notes and the investors have not received a return of
8 their investment nor has their interest in the real property been recorded to secure their interests.

9 **IV.**

10 **VIOLATION OF A.R.S. § 44-1841**

11 **(Offer or Sale of Unregistered Securities)**

12 20. From about November of 2002 through about February of 2003, RESPONDENTS
13 offered or sold securities in the form of notes and/or evidence of indebtedness, within or from
14 Arizona.

15 21. The securities referred to above were not registered pursuant to the provisions of
16 Articles 6 or 7 of the Securities Act.

17 22. This conduct violates A.R.S. § 44-1841.

18 **V.**

19 **VIOLATION OF A.R.S. § 44-1842**

20 **(Transactions by Unregistered Dealers or Salesmen)**

21 23. RESPONDENTS offered or sold securities within or from Arizona, while not
22 registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

23 24. This conduct violates A.R.S. § 44-1842.

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VI**VIOLATION OF A.R.S. § 44-1991****(Fraud in Connection with the Offer or Sale of Securities)**

25. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

a) RESPONDENTS misrepresented to offerees and investors that their investment was secured by an interest in real property when, in fact, the Borrower and RESPONDENTS agreed that the investors' interest in the real property would only be recorded if the Borrower defaulted on the loan.

b) RESPONDENTS failed to disclose to offerees and investors that the investors would have to operate and manage the limited liability company instead of the RESPONDENTS.

c) RESPONDENTS failed to disclose to offerees and investors that HCH was separate from ANMP.

d) KESLER failed to disclose to offerees and investors that he was under a Temporary Cease and Desist Order prohibiting him from offering and selling securities in violation of the Arizona Securities Act.

26. This conduct violates A.R.S. § 44-1991.

27. RESPONDENT HARTZE directly or indirectly controlled HCH and KESLER within the meaning of A.R.S. § 44-1999. Therefore, RESPONDENT HARTZE is liable to the same extent as HCH and KESLER for their violations of A.R.S. § 44-1991.

1 received by the Commission within 10 business days after service of this Notice of Opportunity
2 for Hearing. Each RESPONDENT must deliver or mail the request to Docket Control, Arizona
3 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control
4 cover sheet must accompany the request. A cover sheet form and instructions may be obtained
5 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
6 www.cc.state.az.us/utility/forms/index.htm.

7 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
8 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
9 parties, or ordered by the Commission. If a request for a hearing is not timely made, the
10 Commission may, without a hearing, enter an order against each RESPONDENT granting the relief
11 requested by the Division in this Notice of Opportunity for Hearing.

12 Persons with a disability may request a reasonable accommodation such as a sign language
13 interpreter, as well as request this document in an alternative format, by contacting Yvonne L.
14 McFarlin, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-
15 mail ymcfarlin@cc.state.az.us. Requests should be made as early as possible to allow time to
16 arrange the accommodation.

17 **XIV.**

18 **ANSWER REQUIREMENT**

19 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE
20 requests a hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer
21 to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission,
22 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of
23 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must
24 accompany the Answer. A cover sheet form and instructions may be obtained from
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1 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
2 www.cc.state.az.us/utility/forms/index.htm.

3 Additionally, RESPONDENT or RESPONDENT SPOUSE must serve the Answer upon
4 the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing
5 or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor,
6 Phoenix, Arizona, 85007, addressed to Wendy Coy, Senior Counsel.

7 The Answer shall contain an admission or denial of each allegation in this Notice and the
8 original signature of each RESPONDENT, RESPONDENT SPOUSE or RESPONDENT's
9 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
10 of an allegation. An allegation not denied shall be considered admitted.

11 When RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a
12 part or a qualification of an allegation, RESPONDENT or RESPONDENT SPOUSE shall specify
13 that part or qualification of the allegation and shall admit the remainder. RESPONDENT or
14 RESPONDENT SPOUSE waives any affirmative defense not raised in the answer.

15 The officer presiding over the hearing may grant relief from the requirement to file an
16 Answer for good cause shown.

17 Dated this 29 day of April, 2004.

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19 /s/ Matthew Neubert
20 Matthew Neubert
21 Director of Securities
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